REMARKS

Claims 4-12 are pending. Non-elected claims 1-3 have been cancelled. Claims 4 and 5 have been amended into independent format and now more clearly define the present invention. Lastly, newly added claims 6 and 7 are supported by originally filed claim 3 and newly added claims 8-12 are supported by originally filed claim 2. Therefore, no new matter has been added.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Objections to the Claims

The Examiner has objected to claims 4 and 5 asserting that they refer back to non-elected subject matter. Applicants have amended claims 4 and 5 into independent format. Thus, this objection is moot. Reconsideration and withdrawal thereof are respectfully requested.

Issues under 35 U.S.C. §112, first paragraph

The Examiner has rejected claims 4 and 5 under 35 U.S.C. §112, first paragraph asserting that the specification, while being enabling for decreasing the symptoms of the mood disorder depression, does not reasonably provide enablement for the "prevention" of the symptoms of depression. Applicants traverse and submit that "prevention" language has been removed from these claims. Thus, this rejection is moot. Reconsideration and withdrawal thereof are respectfully requested.

Issues under 35 U.S.C. §102(a)

The Examiner has rejected claims 4 and 5 under 35 U.S.C. § 102(a), as being anticipated by JP Application No. 2001-253740 (JP '740). Applicants respectfully traverse this rejection.

JP '740 is not work by others, but rather represents the work of the present inventors. At first glance, it might appear as though this reference represents the work of others. However, it does not represent the work of others as explained in the attached Declaration under 37 C.F.R. §1.132. For instance, the spelling of "Koseki" should correctly be "Ozeki". Also, Yamazaki should not be listed as an inventor (or contributor) of JP '740.

Therefore, JP '740 is not the work of others and thus does not qualify as prior art under 35 U.S.C. §102(a). The Examiner is therefore requested to withdraw this rejection.

Issues under 35 U.S.C. §103(a)

The Examiner has rejected claims 4 and 5 under 35 U.S.C. §103(a) as being obvious over Blum et al. (U.S. Patent 6,132,724) in view of Kent et al. (J. Affect Dis. 73 (2003); 211-221). Applicants respectfully traverse this rejection.

Applicants point out that the Kent reference has a publication date sometime in the year 2003. However, the present inventors invented the presently claimed subject matter prior to the year 2003. Indeed, as explained in the attached Declaration under 37 C.F.R. §1.131, the present inventors had an actual reduction to practice of the presently claimed subject matter prior to the publication of the Kent reference.

Therefore, Applicants have properly antedated the Kent reference. Without the support of the Kent reference, the Examiner's rejection under 35 U.S.C. §103(a) necessarily fails. Thus, this rejection is moot. Reconsideration and withdrawal thereof are respectfully requested.

Provisional Obviousness-type Double Patenting

The Examiner has provisionally rejected claims 4 and 5 under the judicially created doctrine of obviousness-type double patenting as being over claims 8, 11-14, 16, 22 and 23 of copending application 10/311,972 (the '972 application).

The Examiner has also provisionally rejected claims 4 and 5 under the judicially created doctrine of obviousness-type double patenting as being obvious over claims of copending application No. 10/343,931 (the '931 application).

Applicants respectfully traverse each of the above provisional rejections.

A "provisional" double patenting rejection should continue to be made by the Examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in one of the applications. If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the Examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent. See MPEP § 804(I)(B).

Therefore, in view of the fact that all other rejections have been overcome, the Examiner is requested to allow the present application to issue and apply to the obviousness-type double patenting rejections in the '972 or '931 applications, if needed.

In view of the above, Applicants respectfully submit that the present claims define allowable subject matter. Therefore, the Examiner is respectfully requested to withdraw all rejections and allow the presently pending claims.

If the Examiner has any questions or comments, please contact Craig A. McRobbie, Reg. No. 42,874, at the offices of Birch, Stewart, Kolasch & Birch, LLP at the number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: February 27, 2007

Respectfully submitted,

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Attachments: Declaration under 37 C.F.R. §1.132
Declaration under 37 C.F.R. §1.131